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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/415,890	10/08/1999	BORJE S. ANDERSSON	UTXC:528--1	5425

7590 01/06/2003

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EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 01/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

415890

Applicant(s)

ANDERSON

Examiner

MEL LUY

Group Art Unit

16/6

18

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 30 DAYS ~~MONTH(S)~~ FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 9/24/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 16-23, 26-708 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 16-23, 26-708 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Receipt is acknowledged of IDS, IDS, amendment and Declaration (9/34/02). The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 16-23,99, drawn to method of preparing antifungal compositions, classified in class 514, subclass 28.
- II. Claims 26-48, 50-68, 81-92, 103-105, drawn to solvent vehicles, classified in class 424, and subclass 5.
- III. Claims 49, 69-80, 100-102, drawn to compositions of drugs, classified in class 514, subclass 1+.
- IV. Claims 93-99, 106-108, drawn to method of preparing solvent vehicles, classified in class 23, subclass 294 R

The inventions are distinct, each from the other because:

Inventions of group I or IV and II or III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP§ 806.05(f)). In the instant case the process as claimed can be used to make materially different products, such as herbicides.

The processes of IV and I do not require the same components, and are patentably distinct. The compositions II and III do not require the same components, and are patentably distinct.

Because the Groups have acquired a separate status in the art as shown by their different classification, and their recognized divergent subject matter, the search for any one group is not required for any other group. Furthermore because a search and examination of the entire application would place an undue burden on the Examiner, the present restriction requirement is proper for examination purposes.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

This application contains claims directed to the following patentably distinct species of the claimed invention: secondary solvent: aqueous lipid emulsion, water, saline solution, dextrose solution, glacial acetic acid, lipid solution, parenteral or infusion fluid.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 26-34, 50, 57-59, 63-85, 92-108 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP§809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Claims 49, 69-80 and 100-102 are generic to a plurality of disclosed patentably distinct species comprising specific active agents or drugs; Pimaricin was exemplified, examiner does not find other actives, applicant to identify support for the selected active or drug. Because the above restriction/election requirement is complex, a telephone call to applicant's agent to request an oral election was not made. See M.P.E.P. Sec. 812.01. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant's arguments filed 9/24/02 have been fully considered but they are not persuasive. Applicants' arguments will be considered upon election of invention and species Examiner considers that as this case is now a CPA, and applicant has now traversed restrictions, Examiner is willing to entertain alternative Groupings or species, as indicated above, to those presented 10/25/00: please note no patentable weight given to the process of claim of a vehicle; 26-48, 50-68, 81-92, 103-105, drawn to compositions, ~~Not~~ to intended use by injection, or for humans, etc.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are ~~308~~-4556 for regular communications and 872-9377 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.



Levy/T.G.D.  
December 31, 2002

NEIL S. LEVY  
PRIMARY EXAMINER